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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/510,555	10/07/2004	Andrew James Goodwin	MSP617NAT1	9247

137 7590 03/09/2007  
DOW CORNING CORPORATION CO1232  
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EXAMINER
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SELLMAN, CACHET I

ART UNIT	PAPER NUMBER
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1762

SHORTENED STATUTORY PERIOD OF RESPONSE	NOTIFICATION DATE	DELIVERY MODE
3 MONTHS	03/09/2007	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Notice of this Office communication was sent electronically on the above-indicated "Notification Date" and has a shortened statutory period for reply of 3 MONTHS from 03/09/2007.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patents.admin@dowcorning.com

# Office Action Summary

Application No.

10/510,555

Applicant(s)

GOODWIN ET AL.

Examiner

Cachet I. Sellman

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 08 December 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 14 is/are rejected.
- 7) ☒ Claim(s) 5-13 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Terminal Disclaimer***

1. The terminal disclaimer filed on 12/8/2006 disclaiming the terminal portion of any patent granted on this application, which would extend beyond the expiration date of 10/381, 690 has been reviewed and is NOT accepted.
2. The terminal disclaimer does not comply with 37 CFR 1.321(b) and/or (c) because: The filing date of the pending reference 10/381, 690 is incorrect the date should be 3/35/2003.
3. The rejection of claims 1- 14 is withdrawn due to applicant's submission of an affidavit stating that the reference relied on (US 2004/0022945 A1) is applicant's own work.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-2, and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tanisaki et al. (US 5340618) in view of Kolluri (WO 98/10116).

Tanisaki et al. teaches a method for treating a powder using a plasma reactor under atmospheric pressure. The process comprises introducing a monomer gas into the reaction chamber (col. 4, lines 20-54 and Fig. 1 (14)) and separately transporting

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the powder substrate to be coated into the atmospheric discharge (col. 3, lines 52-66) and exposing the powdered substrate to the monomer gas.

Tanisaki et al. does not teach atomizing the liquid coating forming material as required by **claim 1**.

Kolluri discloses a monomer delivery system that is used for a chemical vapor deposition apparatus, which comprises at least one ultrasonic atomizing nozzle for supplying a vaporized liquid monomer to the reaction to deposit a film on a substrate (abstract). Kolluri's process provided a substantially uniform atomized mist at a precise and controlled rate to the chamber and deposits uniform coatings on all sizes of substrates without the need for expensive or complex arrangements (page 3, lines 12-17).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the process of Tanisaki et al. to include the monomer delivery system of Kolluri. One would have been motivated to do so because both disclose process where a film is formed on a substrate using a vaporized monomer and Kolluri further teaches using the ultrasonic atomizing nozzle provides a substantially uniform atomized mist at a precise and controlled rate to the chamber and deposits uniform coatings on all sizes of substrates without the need for expensive or complex arrangements.

The powdered material is entrained in a carrier gas as required by **claim 2**. The powdered substrate can be metal oxides, dyestuffs, metals, silicas and silicates (col. 4, line 55- col. 5, line 22) as required by **claim 8**.

5. Claims 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tanisaki et al. in view of Kolluri as applied to claim 1 in further view of Phillips et al. (US 6241858 B1).

The teachings of Tanisaki et al. in view of Kolluri as applied to claim 1 are as stated above.

Tanisaki et al. in view of Kolluri does not teach that the powdered substrate is on a support as required by **claim 3**.

Phillips et al. teaches a process for uniformly depositing a coating material from a vaporized source onto a powdered substrate material to form a thin coalescence film of coating material where the substrate can be pigment particles on a vibrating conveyor or bed coater so the particles are uniformly exposed (abstract).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the process of Tanisaki et al. in view of Kolluri to include the vibrating conveyor of Phillips et al. One would have been motivated to do so because both disclose process for coating a powdered substrate and Phillips et al. teaches using a vibrating conveyor allows for uniform coating of the particles.

Phillips et al. teaches using a vibratory conveyor coater as required by **claim 4**.

### ***Double Patenting***

4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

9. Claim 1 is provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 8 of copending Application No. 10/381,690. Although the conflicting claims are not identical, they are not patentably distinct from each other because claim 8 anticipates claim 1 of the current application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

***Allowable Subject Matter***

6. The following is a statement of reasons for the indication of allowable subject matter: Goldenberger et al. (US 3247014) teaches a process for coating particles using a coating material that is vaporized using a hot gas in a plasma state where the reactants partially melt. The particles are on a fluidized bed (abstract and col. 3, lines 11-25). O'Reilly et al. discloses an atmospheric plasma assembly that comprises a pair of spaced apart electrodes and poles having nozzles that are used to spray cooling a water on the electrodes (abstract). This method uses physical vapor deposition. The prior art does not teach coating a powdered substrate using the apparatus of claim 9 and there is no motivation to use the apparatus of O'Reilly et al. to coat a powdered substrate.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cachet I. Sellman whose telephone number is 571-272-0691. The examiner can normally be reached on Monday through Friday, 7:00 - 4:30pm.

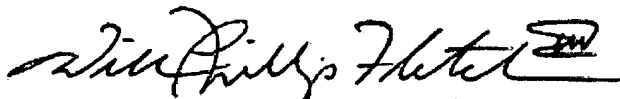
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Timothy Meeks can be reached on 571-272-1423. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Cachet I Sellman  
Examiner  
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A handwritten signature in black ink, appearing to read "William Phillip Fletcher III". The signature is stylized with a large, sweeping "W" and a distinct "F".

William Phillip Fletcher III  
Primary Examiner  
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